

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARGARET GARCIA,	§
	§ No. 160, 2012
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 1104013067
	§
Plaintiff Below-	§
Appellee.	§

Submitted: July 12, 2012
Decided: August 9, 2012

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 9th day of August 2012, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Margaret Garcia, filed an appeal from the Superior Court’s February 28, 2012 violation of probation (“VOP”) sentencing order.¹ The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court’s judgment on the ground that it is manifest on

¹ The order was docketed on March 7, 2012.

the face of the opening brief that this appeal is without merit.² We agree and affirm.

(2) The record before us reflects that, in September 2011, Garcia pleaded guilty to Forgery in the Second Degree and Theft. She was sentenced to a total of three years of Level V incarceration, to be suspended for Level II probation. In January 2012, Garcia was found to have committed a VOP. As a result of that finding, Garcia was assigned to Level III, rather than Level II, probation.

(3) Approximately one month later---in February 2012---Garcia was arrested and charged with additional counts of forgery and theft. As a result of the new charges, a VOP hearing was held on February 28, 2012 at which Garcia was found to have committed a VOP in connection with her 2011 convictions. She was sentenced to a total of three years at Level V, to be suspended after six months of Level IV home confinement for a period of Level III probation.³

² Supr. Ct. R. 25(a).

³ Following the instant appeal, Garcia again was found to have committed a VOP and, on April 24, 2012, was sentenced to a total of three years at Level V, to be suspended for four months at Level IV work release followed by Level III probation. That order was subsequently modified to provide for Level IV home confinement rather than work release.

(4) In her appeal from the Superior Court's February 28, 2012 VOP sentencing order, Garcia claims, in essence, that the evidence adduced at the hearing was insufficient to support the Superior Court's finding of a VOP.

(5) The record reflects that Garcia never made a request for a transcript of the February 28, 2012 VOP hearing. It was Garcia's obligation as the appellant to request that transcript.⁴ Without the transcript, there is an inadequate record for our appellate review of Garcia's claim of error.⁵ As such, we decline to address the claim.

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁴ Supr. Ct. R. 9(e) (ii) and 14(e).

⁵ *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).